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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,341	11/25/2003	George J. Matthews	5377-002-27	3918

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EXAMINER

NGUYEN, TAM M

ART UNIT PAPER NUMBER

3764

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/720,341	<b>Applicant(s)</b> MATTHEWS, GEORGE J.	
	<b>Examiner</b> Tam Nguyen	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18 is/are rejected.
- 7) ☒ Claim(s) 16 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)            | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>one Foreign Reference</u> .            |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 16 and 17 remain objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. In particular, claims 16 and 17 further described a user support that is not part of the invention; thus the subject matter has not been further limited. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "said bed" in line 4. There is insufficient antecedent basis for this limitation in the claim. It is improper to refer back to an element in the preamble unless the element is part of the invention. Applicant may correct this rejection by restating the relevant phrase as follows:  
--a mattress of a bed--.

Claims 2-8 are also rejected for being dependent on a rejected base claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

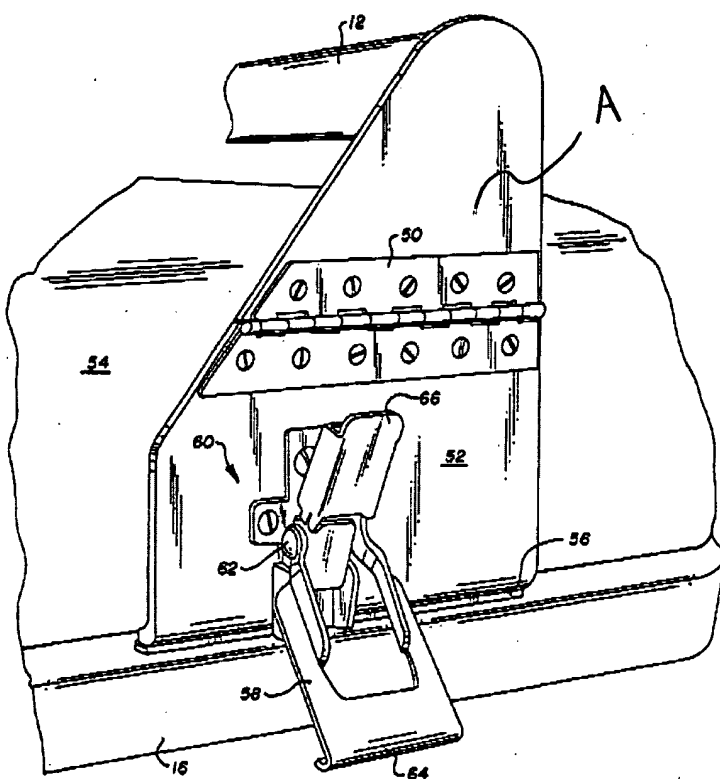
Claims 1 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by McJunkin, Jr. et al. (4,925,184).

3. As to claims 1 and 8, McJunkin et al. disclose an exercise device comprising a base unit having a first portion (64) that can be positioned underneath a mattress (54) of a bed and a second portion (52) that can abut a foot end of the mattress, a top-side unit having a first portion (12) that can be positioned to rest on a surface of the mattress, and a second portion (A) of the top-side unit that is attachable to the second portion of the base unit, a first pedal unit that includes a first pedal portion (42) and at least one shaft (22) connecting the first pedal portion to a receiving portion end (28) located on the top-side unit wherein the first portion (12) of the top-side unit is positioned parallel to the first portion (64) of the base unit, the base unit and the top side unit can be adjustably fixed to the mattress and the pedal portion can be utilized with hands or feet (see Fig. 4 below). Note, the first portion of the top-side unit can be positioned to rest on a surface of the mattress when hinge 50 is pivoted such that the device is not fixed to the mattress.

4. As to claims 9 and 10, McJunkin et al. disclose an exercise device comprising an anchoring base unit that includes a frame portion (64) and at least two attachment sections (52) wherein the frame portion is stabilized by being positioned beneath a bed mattress (54) and the two attachment sections are orthogonal to the frame portion (see Fig. 5) and they both abut an end of the bed mattress, a top-side unit comprising a

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support portion (12) and at least two connecting sections (A) wherein the support portion is positioned to rest on a surface of the bed mattress and the connecting sections are capable of being attached to the two attachment sections, a mounted housing, perpendicularly extending from the support portion of the top-side unit, comprises a receiving feature (24) and a first pedal unit that includes a first pedal (42) and at least one shaft (22) connecting the pedal portion to the receiving feature (see Figs. 4 below and 1 & 5 in the reference). Note, the support portion of the top-side unit can be positioned to rest on a surface of the mattress when hinge 50 is pivoted such that the device is not fixed to the mattress.

**FIG. 4**

Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Anmelder (SE 41 13 135 A1).

5. As to claim 15, Anmelder discloses an exercise device comprising a base unit having a first portion (4) positioned underneath a user support (5), a second portion (9) that abuts an end of the user support, a top-side unit having a first portion (10) positioned to rest on a surface of the user support, and a second portion (2) of the top-side unit is attached to the second portion of the base unit, a first pedal unit (18) that includes a first pedal portion (19) and at least one shaft (11) connecting the first pedal portion to a receiving portion end located on the top-side unit wherein bed ridden users may use the pedal portion to perform bicycle like exercises with their hands or feet (see Figs. 1-3).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dranselka (4,739,984).

6. As to claims 1, 4 and 5, Dranselka discloses an exercise device comprising a base unit having a first portion (19) that can be positioned underneath a mattress and a second portion (17) that can abut an end of the mattress, a top-side unit wherein a first portion (18) can be positioned to rest on a surface of the mattress and a second portion

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(37) that is attached to the second portion of the base unit and a first pedal unit wherein the first portion (18) of the top-side unit is positioned parallel to the first portion (19) of the base unit, the base unit and the top side unit can be adjustably fixed to the mattress (when clamp 38 is adjusted to displace the respective second portions 17, 37 relative to each other) and the first pedal unit includes a pedal portion (15), at least one shaft (13) connecting the first pedal portion to a receiving end located on the top side unit, the first portion (19) of the base unit is orthogonal to the second portion (17) of the base unit and the first portion of the top-side unit is orthogonal to the second portion of the top side unit (see Fig. 4). Dranselka does not disclose that the base unit or the top-side unit is made from a hollow steel frame. Examiner takes Official Notice that the prior art includes exercise devices having frames made from hollow steel. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use any of an array of known materials such as hollow steel to make the units because of the lightweight yet durable quality of steel. The selection of a known material based upon its suitability for the intended use is a design consideration within the skill on the art. In re Leshin, 227 F2d 197, 125 USPQ 416 (CCPA 1960).

7. As to claim 6, Dranselka discloses a modified exercise device as described above (see discussion of claim 5). Dranselka also discloses that the second portion of the top side unit is a male hollow frame that is insertable into a female hollow frame second portion of the base (see Fig. 2).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over McJunkin et al. '184.

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8. As to claim 7, McJunkin discloses an exercise device as described above (see discussion of claim 1). McJunkin does not disclose that shaft connecting the first pedal portion to the first receiving end includes a plurality of telescopic shafts. Examiner takes Official Notice that the prior art includes adjustable segments that comprises a plurality of telescopic shafts. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute McJunkin's singular shaft with any of an array of adjustable shafts such as a plurality of telescopic shafts so that the pedal portion can be easily extended or shortened to fit users of various sizes for improved comfort during exercise.

Claims 2, 3 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over McJunkin et al. '184 in view of Kepiro '732.

9. As to claim 2, McJunkin discloses an exercise device as described above (see discussion of claim 1). McJunkin does not disclose a second pedal unit that includes a second pedal portion having a shaft connected to a second receiving location on the top-side unit wherein bed-ridden persons may use both pedal portions to exercise their hands and feet. Kepiro discloses an exercise device suitable for use with a user on a cot wherein the device includes first and second pedal units having shafts (34) connected to receiving locations (38,38') such that cot/bed-ridden users may perform bicycle-like exercises simultaneously with their hands and feet (see Fig. 1 & Col. 2, lines 63-66). At the time of the invention it would have been obvious to a person of ordinary skill in the art to substitute McJunkin's pedal unit with Kepiro's two pedal units such that a user can exercise more efficiently by rotating his hands and feet simultaneously.



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10. As to claim 3, McJunkin and Kepiro disclose a modified exercise device as described above (see discussion of claim 2). Kepiro further discloses a housing that encloses both receiving ends, and said mounted housing extends orthogonally from the first portion (A) of the top-side unit (see Fig. 4 above).

11. As to claim 11, McJunkin discloses an exercise device as described above (see discussion of claim 9). McJunkin does not disclose that the first pedal portion is connected to the first receiving feature by a plurality of telescopic slidable shafts.

Kepiro discloses an exercise device suitable for use with a user on a cot wherein a pedal portion (12) is connected to a first receiving portion (38) by a plurality of telescopic slidable shafts (32, 34) (see Fig. 1 & Col. 2, lines 63-66). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make McJunkin's support rods (22) telescopically adjustable such that user's of various heights can use the device without having to move the entire device along the bed.

12. As to claims 12-14, McJunkin discloses an exercise device as described above (see discussion of claim 9). McJunkin does not disclose a second pedal unit that includes a second pedal portion having a shaft connected to a second receiving location on the top-side unit wherein bed-ridden persons may use both pedal portions to exercise their hands and feet. Kepiro discloses an exercise device suitable for use with a user on a cot wherein the device includes first and second pedal units having shafts (34) connected to receiving locations (38,38') such that cot/bed-ridden users may perform bicycle-like exercises simultaneously with their hands and feet (see Fig. 1 & Col. 2, lines 63-66). Kepiro also discloses that the first (12) and second pedal portions

(20) are respectively connected to first and second receiving features (38,38') by telescopic slidable shafts (see Fig. 2). At the time of the invention it would have been obvious to a person of ordinary skill in the art to substitute McJunkin's pedal unit with Kepiro's two pedal units such that a user can exercise more efficiently by rotating his hands and feet simultaneously at variable distances relative to the anchoring base unit.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anmelder in view of Kepiro (4,881,732).

13. As to claim 18, Anmelder discloses an exercise device as described above (see discussion of claim 15). Anmelder does not disclose a second pedal unit such that bed-ridden users may perform bicycle-like exercises simultaneously with their hands and feet. Kepiro discloses an exercise device suitable for use with a user on a cot wherein the device includes first and second pedal units such that bed-ridden users may perform bicycle-like exercises simultaneously with their hands and feet (see Fig. 1 & Col. 2, lines 63-66). At the time of the invention it would have been obvious to a person of ordinary skill in the art to combine the teaching of Kepiro to have two pedal units to Anmelder's device such that a user can exercise more efficiently with two pedal units by rotating his hands and feet simultaneously.

### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 1, 2006

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(JACKIE) TAN-UYEN HO  
PRIMARY EXAMINER  
12/8/06